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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,273	03/16/2001	Hiroyuki Nishii	Q63124	4971

7590

10/19/2006

SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 pennsylvania Avenue, N.W.  
Washington, DC 20037

EXAMINER
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GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/809,273	<b>Applicant(s)</b> NISHII ET AL.	
	<b>Examiner</b> Dawn Garrett	<b>Art Unit</b> 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-6 and 9-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4, 10 and 13 is/are allowed.
- 6) ☒ Claim(s) 3, 5, 6, 9, 11, 12 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 3, 2006 has been entered.

2. The amendment submitted August 3, 2006 has been entered. Claims 1, 2, 7, and 8 are cancelled. Claims 15-18 have been added. Claims 3-6 and 9-18 are pending.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 6 are again rejected under 35 U.S.C. 102(b) as being anticipated by Cook (US 3,429,717). Cook describes a laminate film wrapper comprising two polymeric layers such as polymers of alpha olefins with an antioxidant layer in between the two polymer layers. A nylon may be further laminated to one of the polymeric layers (see col. 2, lines 7-26). The nylon reads upon the non-porous sheet. The polyolefin reads upon the porous sheet. The antioxidant is the removing agent. The film is used as a wrap per the requirement of a container. The phrase "for an electroluminescent device" is considered to be an intended use and has not been given patentable weight. The antioxidant of the film absorbs oxygen. See entire patent.

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5. Claims 5 and 6 are again rejected under 35 U.S.C. 102(b) as being anticipated by Farrell et al. (US 4,536,409). Farrell et al. discloses an oxygen scavenger multi-layered film for food or beverage containers (see col. 1, lines 6-22). The laminate sheets may comprise a polymer oxygen barrier layer per the non-porous layer, a polymer layer incorporating an oxygen scavenger per the removing agent and at least one polymer protective layer per the porous layer (see col. 10, claim 9). The polymeric protective layer may be a polyolefin (see col. 12, claims 25 and 26).

6. Claims 3, 9, 11, 12, and 14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 3,429,717) in view of Biebuyck et al. (US 5,734,225). Cook describes a laminate film wrapper for a hermetically sealed package comprising two polymeric layers such as polymers of alpha olefins with an antioxidant layer in between the two polymer layers. A nylon may be further laminated to one of the polymeric layers (see col. 2, lines 7-26). The nylon reads upon the non-porous sheet. The polyolefin reads upon the porous sheet. The antioxidant is the removing agent. The film is used as a wrap per the requirement of a container. The antioxidant of the film absorbs oxygen (see entire patent). Cook describes the packaging as being useful for hermetically sealing food, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the film taught by Cook as part of a container for an organic electroluminescent device, because Cook teaches the film

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contains an antioxidant for protection against oxidation and Biebuyck et al. teaches organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

7. Claims 3, 9, 11, 12 and 14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,536,409) in view of Biebuyck et al. (US 5,734,225). Farrell et al. discloses an oxygen scavenger multi-layered film for food or beverage containers (see col. 1, lines 6-22). The laminate sheets may comprise a polymer oxygen barrier layer per the non-porous layer, a polymer layer incorporating an oxygen scavenger per the removing agent and at least one polymer protective layer per the porous layer (see col. 10, claim 9). The polymeric protective layer may be a polyolefin (see col. 12, claims 25 and 26). Farrell et al. describe the packaging as being useful for hermetically sealing food, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the film taught by Farrell et al. as part of a container for an organic electroluminescent device, because Farrell et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

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8. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Cook (US 3,429,717) in view of Takita et al. (JP 05-156058). Cook is relied upon for the rejection of claim 5 as set forth above. Cook discloses the use of layers comprised of polymers of alpha olefins, but fails to teach specifically a pore size for the polyolefin material. Takita et al. teaches in analogous art polyethylene fine porosity film for various applications (see par. 70) with average apertures of 0.05 to 0.20 micrometers (see par. 68). It would have been obvious to one of ordinary skill in the art to have selected the polyolefin films disclosed by Takita et al. for the polyolefin layer(s) of the Cook article, because Takita et al. teaches the films are used for various applications requiring protective polyolefin layers.

9. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Farrell et al. (US 4,536,409) in view of Takita et al. (JP 05-156058). Farrell is relied upon for the rejection of claim 5 as set forth above. Farrell discloses the use of layers comprised of polymers of alpha olefins, but fails to teach specifically a pore size for the polyolefin material. Takita et al. teaches in analogous art polyethylene fine porosity film for various applications (see par. 70) with average apertures of 0.05 to 0.20 micrometers (see par. 68). It would have been obvious to one of ordinary skill in the art to have selected the polyolefin films disclosed by Takita et al. for the polyolefin layer(s) of the Farrell article, because Takita et al. teaches the films are used for various applications requiring protective polyolefin layers.

10. Claims 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (US 3,429,717) in view of Biebuyck et al. (US 5,734,225) in further view of Takita et al. (JP 05-156058). Cook is relied upon for the rejection of claim 3, 9, and 11 as set forth above. Cook discloses the use of layers comprised of polymers of alpha olefins, but fails to teach

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specifically a pore size for the polyolefin material. Takita et al. teaches in analogous art polyethylene fine porosity film for various applications (see par. 70) with average apertures of 0.05 to 0.20 micrometers (see par. 68). It would have been obvious to one of ordinary skill in the art to have selected the polyolefin films disclosed by Takita et al. for the polyolefin layer(s) of the Cook article, because Takita et al. teaches the films are used for various applications requiring protective polyolefin layers.

11. Claims 15, 17, and 18 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,536,409) in view of Biebuyck et al. (US 5,734,225) in further view of Takita et al. (JP 05-156058). Farrell is relied upon for the rejection of claims 13, 9 and 11 as set forth above. Farrell discloses the use of layers comprised of polymers of alpha olefins, but fails to teach specifically a pore size for the polyolefin material. Takita et al. teaches in analogous art polyethylene fine porosity film for various applications (see par. 70) with average apertures of 0.05 to 0.20 micrometers (see par. 68). It would have been obvious to one of ordinary skill in the art to have selected the polyolefin films disclosed by Takita et al. for the polyolefin layer(s) of the Farrell article, because Takita et al. teaches the films are used for various applications requiring protective polyolefin layers.

***Allowable Subject Matter***

12. Claims 4, 10, and 13 are allowed for the reasons previously given in a previous Office action.

***Response to Arguments***

13. Applicant's arguments filed August 3, 2006 have been fully considered but they are not persuasive.

Applicant argues "the Examiner has not interpreted the claim language, particularly the term "porous" consistent with the supporting specification and the state of the prior art". The examiner submits that the terms "porous" and "gas permeable" are overlapping terms. A gas permeable material does have pores. Applicant has pointed to only one reference that happens to define "porous" as a particular pore size. The examiner submits that polyolefin films are commonly known to have pores. In addition, the reference cited in this Office action, JP 05-156058, discloses pores of a polyolefin film within the range specifically disclosed by applicant. Applicant appears to argue that Cook and Farrell et al. are gas permeable, but are not "porous". The examiner concludes that a substance that is gas permeable has pores through which gas may penetrate the material. Furthermore, polyolefin films with pores within applicant's specifically claimed range for pores are commonly known and used.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dawn Garrett  
Primary Examiner  
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